



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 4 1992

OFFICE OF
PESTICIDES AND TOXIC
SUBSTANCES

Mr. John Myslicki, Chief
Hazardous Waste Management Division
Environment Canada
Ottawa, Ontario
Canada, K1A0H3

Dear Mr. Myslicki:

The purpose of this letter is to communicate to you, for your information, the United States Environmental Protection Agency's (EPA) interpretations of two rules issued under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, generally concerning the export of polychlorinated biphenyls (PCBs). More specifically, these interpretations relate to (1) the export of certain PCBs sold for purposes other than resale before July 1, 1979, and (2) the export notification requirements for the export of PCB Equipment from the United States.

Export of PCBs Sold for Purposes other than Resale before July 1, 1979

Under the authority of TSCA § 6(e), EPA established a comprehensive regulatory scheme covering manufacturing, processing, use, distribution in commerce, and disposal of PCBs. See 40 CFR Part 761.

Under the PCB rules at § 761.20(c), EPA stated that "No persons may process or distribute in commerce any PCB, or any PCB Item... for export from the United States without an exemption." EPA promulgated several exceptions to this rule. Most notably, the rule states:

PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for purposes other than resale may be distributed in commerce only in a totally enclosed manner after that date. § 761.20(c)(1).

Under this provision, PCB Items (e.g., capacitors and transformers) meeting the specific conditions of § 761.20(c)(1) may be processed or distributed in commerce for export for the purpose of reuse.



The export of PCBs and PCB Items (with PCB concentrations greater than or equal to 50 ppm) for disposal, however, is **banned** pursuant to the PCB Closed Border Policy published in the Federal Register of May 1, 1980 (45 FR 29115) and 40 CFR 761.20(c)(3). Export for disposal constitutes illegal disposal under the PCB rules.

Export Notification for PCB Equipment

Under the TSCA § 12(b) Export Notification Rule (40 CFR 707.60(c)), export notification is required for PCBs and PCB Articles (as defined at 40 CFR 761.3), including, but not limited to, PCB Capacitors and PCB Transformers. However, export notification is not required for PCB Equipment. PCB Equipment is defined in the PCB rules as:

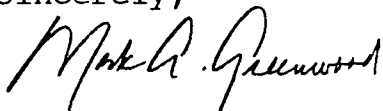
"any manufactured item, other than a PCB Container or PCB Article Container, which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures."
40 CFR 761.3

The interpretation excepting export notification for PCB Equipment from the TSCA § 12(b) Export Notification Rule is consistent with EPA's past statements regarding the subject, as published in the preambles to the final Export Notification Rule ("Notice of export for 'PCB Articles,' except PCB Equipment...is required," 45 FR 82844, 82846, Dec. 16, 1980); the notice announcing EPA's interim TSCA § 12(b) export notification procedures ("...EPA has concluded notification of exports of PCB equipment would be excessively burdensome. Hence, such notification is not required...", 43 FR 24818, June 7, 1978); and the PCB Ban Rule ("The requirement [§ 12(b) export notification] does not apply to the export of PCB equipment...", 44 FR 31514, 31537, May 31, 1979).

Export of PCB Articles and other PCBs not falling within the definition of PCB Equipment under 40 CFR Part 761 does, however, trigger the § 12(b) export notification provisions of 40 CFR Part 707. Thus, for example, export of PCB Capacitors not a part of PCB Equipment at the time of export would trigger the export notification requirements.

If you have any questions concerning the above, please contact Tony Baney, Chief, Chemical Regulation Branch, at (202) 260-3933.

Sincerely,



Mark A. Greenwood, Director
Office of Pollution Prevention and
Toxics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG - 6 1991

Mr. Stanley Abramson, Esq.
King & Spalding
1730 Pennsylvania Avenue, N.W.
Washington, DC 20006-4706

OFFICE OF
PESTICIDES AND TOXIC
SUBSTANCES

Dear Mr. ^{Stan}Abramson:

I am writing in response to your letters of April 10, 1991, and May 9, 1991, in which you request to meet with me on behalf of your client, General Motors Corporation (GM). The proposed meeting would concern your request for an exemption to export small Polychlorinated Biphenyl (PCB) capacitors and other small electrical components containing PCBs.

These PCB components, as described in your April 10, 1991 letter, do not currently require an exemption in order to distribute them in commerce for export for the purpose of re-use. The export of these components (≥ 50 ppm PCB) for disposal rather than re-use, is banned pursuant to the Closed Border Policy published in the Federal Register of May 1, 1980 (45 FR 29115). I understand that GM is currently in the process of providing EPA Region V with a response to a June 18, 1991 subpoena that requests, in part, documentation showing that the PCB components in question are being distributed in commerce for the purpose of re-use and not for the purpose of disposal.

An Export Notice pursuant to the Toxic Substances Control Act (TSCA) §12(b) and 40 CFR §707.60(c) must be submitted to EPA prior to the export of the small PCB capacitors described in your letter. Since this requirement is fairly straight-forward, the meeting that you propose is unnecessary.

This letter only addresses the requirements under TSCA, and is not responsive to the requirements imposed by other federal statutes, state laws or local provisions. Likewise, this letter does not address Canadian regulations governing the import of PCBs. In the event that the Canadian authorities prohibit further distribution of the PCB components once they enter Canadian territory, these items would be prohibited from returning to the United States pursuant to the TSCA ban on manufacture (import) of PCBs (TSCA §6 and §3) and the EPA Closed Border Policy.




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In consideration of your February 5, 1991 letter to the Department of Justice, EPA may propose a rule clarifying the Agency's intent with regard to export of PCBs and PCB Items. Until a rule is promulgated, EPA will meet with various industry groups to discuss voluntary pollution prevention measures to ensure that the export of PCB Items for use, such as transformers and large capacitors, is conducted in an environmentally sound manner. Should your client seek to export PCB Items other than small capacitors as described in your April 10, 1991 letter, I would encourage you to contact me to discuss this issue further.

If you have further questions regarding this letter, please direct them to Diane Lynne at (202) 382-3967 or Tom Simons at (202) 382-3991.

Sincerely,



Mark A. Greenwood
Director
Office of Toxic Substances

cc: Ms. Susan Perdomo
U.S. EPA, Region V, Office of Regional Counsel

Mr. Sam Boxerman
U.S. Department of Justice

Mr. Michael J. Walker
U.S. EPA, Washington, D.C.